IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO.139 OF 2006
WITH
LETTERS PATENT APPEAL NO.195 OF 2006
and
Civil Application Nos.514 of 2006 and 1380 of 2006
In
SPECIAL CIVIL APPLICATION No. 13606 of 2005

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

HONOURABLE MR.JUSTICE A.S.DAVE

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JAYANT VEGOILS & CHEMICALS PVT.LTD.
Versus
A.P.M.C. VADODARA & others

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Appearance :

Mr. Kamal Trivedi, learned Senior Advocate, with Mr. Kartik M. Thakkar and Mr. Yusuf Iqbal for the appellants

Mr. S.K. Jhaveri, learned counsel, with Mr. Dilip B. Rana for the respondents

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CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE A.S.DAVE

Date : 24/04/2007

C.A.V. COMMON **JUDGMENT**

(Per : HONOURABLE MR.JUSTICE A.S.DAVE)

1 Both these Letters Patent Appeals under Clause 15 of the Letters Patent came to be admitted by the Division Bench of this Court vide order dated 14th February 2006. To avoid repetition of the facts, while deciding these appeals finally, it will be profitable to reproduce the order dated 14th February 2006, admitting both these appeals and granting stay against the impugned order of the learned Single Judge on certain conditions, since the facts emerging from the record and the relevant provisions of the Gujarat Agricultural Produce Markets Act, 1963 [for short, 'the Act'] and the Gujarat Agricultural Produce Markets Rules, 1965 [for short, 'the Rules'] are encompassed succinctly.

> "Both these appeals are directed against the judgment dated 22.12.2005 of the learned Single Judge, by which the learned Single Judge partly allowed the petition filed by the Agricultural Produce Market Committee, Baroda (APMC) and substantially set aside the decision of the State Government in revision.
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> 2. The controversies involved in these appeals are;
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> (i) Whether Jayant Vegoils & Chemicals Private Ltd., (hereinafter referred to as the "industrial concern" or "the company" for brevity) is liable to levy of market fee on the castor seeds which are brought from outside the market area of APMC, Baroda and which seeds are used by the industrial concern for manufacturing castor oil within the market area of the APMC, Baroda ;
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> (ii) Whether the industrial concern is liable to pay any market fee on the de-oiled cakes being sold by it, which products are stated to be by-products in the course of manufacturing castor oil.
>
> 3. Agricultural Produce Market Committee, Baroda is

constituted under the provisions of the Gujarat Agricultural Produce Markets Act, 1963. Section 28 empowers the Market Committee to levy and collect fees on agricultural produce bought or sold in the market area. The agricultural produce is defined as all produce, whether processed or not, of agriculture ... specified in the Schedule to the Act. Castor seeds are, for the first time, brought within the Schedule with effect from 1.4.2004. The company is manufacturing castor oil from out of the castor seeds purchased by it. APMC, Baroda levied market fee on the castor seeds bought by the company on the basis that the castor seeds were bought within the market area of APMC, Baroda. The company contested the levy by contending that the castor seeds were bought outside the market area of APMC, Baroda and that in any case, under Sub-Rule (2) of Rule 48, no fees are leviable on agricultural produce brought from outside the market area into the market area for use therein by the industrial concern situated in the market area. As regards the liability to pay market fee on sale of de-oiled cake, the company contended that de-oiled cake is the by-product in the process of manufacturing castor oil, and is different from oil cake which is exigible to market fee; in de-oiled cake the percentage of oil is less than one percent and, therefore, so negligible that it cannot be considered as oil cake which is a separate item altogether.

4. The company challenged the levy in a revision before the State Government under Section 48 of the Act. The State Government considered the matter and by its order dated 19.4.2005 (Annexure `A') held in favour of the industrial concern on both the counts. Aggrieved by the said decision APMC, Baroda moved the petition before the learned Single Judge. After hearing the parties at length and after referring to the provisions of Sections 19 to 21 of the Sales of Goods Act, 1930 and provisions of the Act and the Rules, the learned Single Judge held that the sale of the castor seeds in question took place within the market area of APMC, Baroda and, therefore, the APMC was right in levying market fee on the castor seeds purchased by the company within the market area of APMC, Baroda. As regards reliance placed on the exemption clause in Sub-Rule (2) of Rule 48, the learned Single Judge held that the said exemption was available to agricultural produce brought by the industrial concern itself from outside the market area into the market area of APMC, Baroda and that the exemption was not available where the castor seeds were brought within the market area by the seller and sold to the industrial concern within the market area. The learned Single

Judge, accordingly, upheld the plea of the APMC, Baroda for levy of market fee on the castor seeds purchased by the industrial concern.

However, as regards levy of market fee on de-oiled cake, the learned Single Judge accepted the contention of the company and held that it could not be treated as oil cake and, therefore, de-oiled cake was not exigible to levy of market fee.

5. Aggrieved by the above decision of the learned Single Judge, Letters Patent Appeal No.139 of 2006 is filed by the company - industrial concern in so far as the learned Single Judge has held that the purchase of castor oil seeds by the industrial concern is exigible to levy of market fee. Letters Patent Appeal No.195 of 2006 is filed by the APMC, Baroda for challenging the finding that market fee is not leviable on de-oiled cake.

6. Mr.B.S.Patel and Mr.Tushar Mehta, for the company - industrial concern, have challenged the finding given by the learned Single Judge that sale of the castor seeds took place within the market area of APMC, Baroda and have also contended in the alternative that even if the castor seeds are treated as having been purchased within the limits of market area of APMC, Baroda, the company is entitled to avail of exemption under Sub-Rule (2) of Rule 48 which provides that no fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concern. It is submitted that the learned Single Judge erred in holding that the exemption would apply only if the agricultural produce is brought by the industrial concern itself within the market limits of APMC, Baroda.

Reliance is placed on the decision of a Division Bench of this Court in M/s Doshi Kantilal Ratilal Vs. State of Gujarat, 1994(2) GLR 1706 in support of the proposition that the question as to who has brought the agricultural produce within the market limits is neither relevant nor of any consequence and that the agricultural produce being brought within the limits of the APMC and its use by the industrial concern situate in the market area is sufficient to qualify for exemption under first part of sub-rule (2) of Rule 48.

It is vehemently submitted that the object of levying market fee is to compensate the Agricultural Produce Market Committee for the services being rendered by it within the market area but such services are rendered by the APMC only when the

agricultural produce mentioned in the Schedule to the Act is sold by one party and purchased by the other party for the purpose of further sale to a third party and that no such services are rendered by the APMC when the agricultural produce is purchased by the industrial concern for captive consumption. APMC has never challenged the vires of Sub-Rule (2) of Rule 48.

7. On the other hand, it is submitted by Mr.S.K.Zhaveri, learned counsel for APMC, Baroda that the Agricultural Produce Markets Act, 1963 itself does not confer any power of exemption and, therefore in absence of any such provision in the Act, the Rules such as Sub-Rule (2) of Rule 48 are required to be construed very strictly as done by the learned Single Judge. It is submitted that on a correct interpretation, the relevant part of Sub-Rule (2) of Rule 48 would read as under -

"No fee shall be levied on the agricultural produce brought (by the industrial concern) from outside the market area into the market area for use therein by the industrial concern".

In view of the finding of fact given by the learned Single Judge that the castor seeds were brought within the market area of APMC, Baroda, by the seller of the castor seeds and not by the industrial concern itself, the exemption is rightly denied by the APMC, Baroda, which contention is upheld by the learned Single Judge. Reliance is placed on the decision of a Division Bench of this Court in M/s Doshi Kantilal Ratilal Vs. State of Gujarat, 1994(2) GLR 1706 in support of the proposition that rendering of service is not a quid pro quo for levy of market fees.

8. On the question of de-oiled cake, Mr.Zhaveri for APMC has submitted that the learned Single Judge has erred in holding that de-oiled cake does not contain any oil and that it cannot be considered as oil cake.

9. The relevant provisions of the Act and the Rules relied upon by the parties read as under :

> "Sec.28. The market committee shall, subject to the provisions of the rules and the maxima and minima from time to time prescribed levy and collect fees on the agricultural produce bought or sold in the market areas :
>
> Provided that the fees so levied may be collected by the

Market Committee through such agents as it may appoint.

Rule 48. Market fees – (1)The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the bye-laws subject to the following minima and maxima viz.,

(1) rates when levied ad valorem shall not be less than 15 paise and shall not exceed 40 paise per hundred rupees.

(2) ....

(At the hearing, the learned counsel for the parties were not in a position to state whether there is any revision of rates.)

Explanation – For the purpose of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact, that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

(2) No fees shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been obtained in Form V :

Provided ... (relating to exports) ...

Provided that no fee shall be payable on a sale or purchase to which sub-sec. (3) of Sec.6 applies.

Rule 49. Recovery of fees : - (1) The fees on agricultural produce shall be payable as soon as it is brought into the principal market yard or sub-market yard or market proper or market area from purchaser as may be specified in the bye-laws :

Provided that the fees so paid shall be refunded :

(i) on production of sufficient proof that such produce was not sold within the limits of the market area ; or

(ii) if such produce is brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and in respect of which a declaration has been made and a certificate has been obtained in Form V subject to the proviso to sub-rule (2) of Rule 48.

iii) ...

The relevant part of Form V reads as under :

FORM V
[See Rule 48(2)]
Form of Declaration and Certificate

Kinds of Agricultural Produce	Carts and packages	Where brought	Name of seller	Through whom brought	Name of the buyer or his agent
1	2	3	4	5	6

I hereby certify that the above mentioned agricultural produce has been bought from outside the limits of the market area and brought in the limits of the market *[area] for the purposes of -

Dated : Signature

10. Having heard the learned counsel for the parties, we are of the view that the appeals do raise arguable questions of interpretation of the provisions of the Act and the Rules, particularly, the provisions of Section 28 and Sub-Rules (1) and (2) of Rule 48.

Hence, the appeals are admitted."

2 The Division Bench also considered the question of interim relief

and operation of the impugned order dated 22nd December 2005 was stayed on certain terms and conditions, as stated in paragraph 13 of the above order.

3 Thereafter, the above order came to be challenged before the Apex Court and the Apex Court declined to interfere with the interlocutory order and, today, the matters are placed for final hearing.

4 Both the learned advocates appearing for the respective parties have canvassed their rival submissions and reiterated what was submitted at the time of admission of these appeals as recorded in paragraphs 6, 7 and 8 of the order.

5 Learned counsel for the appellant, Jayant Vegoils & Chemicals Private Limited, has contended that the learned Single Judge has not considered the very fact that the Company was exempted under sub-rule (2) of Rule 48 of the Rules. It is also contended that interpretation given to the word 'sale' in the context to Sections 19 to 22 of the Sales of Goods Act, 1930, is not applicable, in view of the peculiar facts of this case. Learned counsel for the appellant has further contended that, in fact, sale does not take place within the market area and 'agricultural produce' brought from outside market area by the Company for captive consumption and, therefore, exempted under Rule 48(2). In the present case, castor seeds, a notified agricultural produce, is brought from outside the market area by the Company for use to produce a different product, namely, castor oil, which is again a product notified in the schedule. It is, therefore, contended that sale of castor seeds never takes place within the market area of the APMC, Vadodara, and the product of castor oil produced by the Company is not leviable to fees in view of the exemption under sub-rule (2) of Rule 48, which provides that no fees

shall be levied on the agricultural produce brought from outside the market area into the market area, for use therein, by the industrial concern. Therefore, according to the learned counsel for the appellant, the learned Single Judge has failed to apply provisions of exemption clause contained in sub-rule (2) of Rule 48 of the Rules and the order passed by the Revisional Authority declaring that the Company is not liable to pay market fees to A.P.M.C. Vadodara, in view of sub-rule (2) of Rule 48 of the Rules, is required to be upheld.

6 Mr. S.K. Jhaveri, learned counsel appearing for the Market Committee, has submitted that the finding of the learned Single Judge, with regard to the fact that sale of the notified agricultural produce, namely, castor seeds, does take place within the market area, and, thus, the Company is liable to pay market fees in view of sub-rule (2) of Rule 48 of the Rules and also in view of sub-rule (1) of Rule 49 of the Rules, that the purchaser is duty bound to pay market fees, requires no interference. However, Mr. Jhaveri, learned counsel for the appellant-APMC, Vadodara, in the cognate appeal, has contended that part of the order of the learned Single Judge with regard to finding of product named as de-oiled cake, which is not notified product for levying market fees according to the learned Single Judge, is illegal, and contrary to the facts of process involved in the manufacture of de-oiled cake and requires to be set aside. According to Mr. Jhaveri, there is no product or bi-product like de-oiled cake and sale of oil cake takes place and, therefore, the Company cannot escape from the liability to pay market fees to the APMC, Vadodara.

7 In the backdrop of the above submissions canvassed by the learned advocates for the respective parties, perusal of the record of the case, the impugned order passed by the learned Single Judge and the relevant

provisions of the Act and the Rules framed thereunder, this Court has to consider two main questions, involved in these appeals, as framed in paragraph 2 of the order dated 14th February 2006, as under:

> "(i) Whether the Company is liable to levy of market fee on the castor seeds which are brought from outside the market area of APMC, Baroda and which seeds are used by the industrial concern for producing castor oil within the market area of the APMC, Baroda ;
>
> (ii) Whether the industrial concern is liable to pay any market fee on the de-oiled cakes being sold by it, which products are stated to be by-products in the course of manufacturing castor oil and the said de-oiled cakes is not notified as 'agricultural produce' to be levied market fees."

8 Section 28 of the Act empowers the Market Committee to levy and collect fees on notified agricultural produce bought or sold in the market area, subject to the provisions of the Rules and at the rate maxima and minima, from time to time prescribed. Thus, the power of the Market Committee to levy prescribed fees is envisaged in the above section. In juxtaposition to the above section, it is necessary to refer to Rule 48 of the Rules, and more particularly Rules 48 and 49, placed in Part VI with heading 'Fees,Levy and Collections', pertaining to market fees. Rule 48, sub-rule (1) and the explanation is highlighted by the learned Single Judge and discussion has taken place on the basis of certain material available on record with regard to sale of castor seeds by one Manish Trader of Ahmedabad to the Company and after relying upon Sections 19 to 22 of the Sale of Goods Act, the learned Single Judge found that sale does take place within the market area and, therefore, the Company is liable to pay market fees. However, sub-rule

(2) of Rule 48 of Part VI of the Rules clearly prescribes that no fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been obtained in Form V. Thus, the above sub-rule (2) of Rule 48 nowhere prescribes that agricultural produce brought from outside the area of market committee has to be by the industrial concern itself. The preceding word is 'brought' and not 'bought'. Even the facts of the present case are examined, nowhere it is mentioned that purchase took place within the area of the market committee. In the affidavit-in-reply filed by the Company, it is clearly mentioned that purchase of castor seeds did take place outside the market area and no sale takes place within the market area. Even, weighment, etc. is also done outside the market area and bills are prepared accordingly and, that too, after selection by the representative of the Company. Not only that, but, the Company has produced bills of one Manish Traders at page 109 of Letters Patent Appeal No.195 of 2006, having numbered as Bill No.93, dated 3rd May 2004, is clearly indicative of the fact that sale does not take place within the area of Market Committee, Baroda. Besides, the octroi paid to the Baroda Municipal Corporation on the goods, namely, castor seeds imported and produced at page 107 is also suggestive of the fact that sale does not take place within the area of market committee. Even, the Company has produced number of forms prescribed under Rule 48, sub-rule (2) from page 79 to 86, the fact not denied by the Market Committee, which also establishes the case of the Company with sufficient declaration and a certificate that the above-mentioned agricultural produce, namely, castor seeds, has been brought from outside the limits of the market area and brought within the limits of market area for industrial purpose, and for production of castor oil and other by-products. Thus, the

Company fully complied with the requirement of Rule 48 of the Rules and is entitled for exemption from payment of market fees. Therefore, exercise undertaken by the learned Single Judge to find out the place of sale, so as to bring the case of the Company under Rule 48, sub-rule (1) of the Rules, is of no help and the finding, on that basis, arrived at by the learned Single Judge, will have to be quashed and set aside in the back-drop of the above discussion and the fact-situation.

9 It is also clear from the law laid down by the Apex Court in the case of Agricultural Market Committee vs. Shalimar Chemical Works Limited, reported in AIR 1997 Supreme Court 2502, whereby, Their Lordships have held that mere weighment of notified produce in notified area is not sufficient to establish that transaction of sale took place in the market area. Even, recently, the Apex Court in the case of Orient Paper & Industries Limited vs. State of M.P. And others, reported in 2006 AIR SCW 6017, held that, where agricultural produce is brought into the market area and used for processing, but, end product manufactured is different, the agricultural produce does not attract levy of market fee. A reliance was also placed by the Apex Court on the words, 'process' and 'manufacture' and it is held that, if, ultimately, agricultural produce is brought by an industrial concern and end product, which is marketable, as the result of manufacturing, no fees to be levied by the Market Committee. Thus, when the language of the Rule is not ambiguous, plain interpretation is the golden rule of statutory interpretation.

10 It is pertinent to note that the learned advocates for both the sides have placed reliance on the decision of the Division Bench of this Court in the case of M/s. Doshi Kantilal Ratilal and others vs. State of Gujarat and others, reported in 1994 [2] GLR p.1706, and, therefore, it is

necessary to refer to the law laid down by the Division Bench of this Court in the above-referred judgment.

11 In the above case, vires of Rules 48 and 49 of the Rules came to be challenged and, in the above context, the Division Bench held that the above Rules are not ultra vires. In this very case, the Division Bench also considered the law laid down by the Apex Court in the case of Chhaganlal Mansukhlal vs. K.K. Bhatt, reported in AIR 1981 SC 1102, and, after considering the amendment dated 4.9.1982 made in Rule 49, held that inclusion of words 'from the purchaser', by the aforesaid amendment, is in the nature of clarificatory amendment and the interpretation, as accepted by the Apex Court in AIR 1981 SC 1102, is of no help to the challenges of vires of Rules 48 and 49 and, in terms of Rule 49, the fees on agricultural produce shall be payable by the purchaser when it is brought into the market and purchased and it is nobody's case that it is charged more than once.

12 While answering the question of liability of the purchaser to pay fee on the agricultural produce, this Court, referring to Rule 48, observed that the Market Committee is clothed with power to levy and collect fees on agricultural produce bought and sold in the market area. This Court, further, held that it has to be agreed on all hands that the agricultural produce is brought into the market only for the purpose of sale and purchase and under Rule 49 (amended) it is to be recovered from the purchaser. The purchasers or traders cannot escape this liability by saying that it is to be recovered from the party which brings such produce in the market. The reason is clearly found in the language employed in Section 28 read with Rule 48 in as much as the fee is on agricultural produce bought and sold in the market area and, under Rule 49 (amended), it is to be recovered from the purchaser and,

therefore, who has brought it, is neither relevant nor of any consequence. This Court also relied upon the decision of the Apex Court in the case of Sri Krishna Coconut Company vs E.G.C. & T.M. Committee, reported in AIR 1967 SC 973, while interpreting the words 'bought and sold', object of the Act and Section 11(1) in Madras Commercial Crops Markets Act, 1933.

13 The above judgment of the Division Bench of this Court, upon a close scrutiny, reveals that Rule 48, sub-rule (2), never fell for consideration in the context of the facts, which arise in this petition. The amendment of 4.9.1992 in Rule 49 of inclusion of words 'from the purchaser' indicates buying of agricultural produce, irrespective of the fact whether buying or purchasing has taken place within the market area. It is also to be noted that inclusion of words by way of amendment is 'from the purchaser and not by the purchaser'. Thus, if sub-rule (1) of Rule 49 is read as a whole in continuity, it would mean that the fees on agricultural produce shall be payable as soon as it is brought into the market yard xx xx xx from the purchaser, as may be specified in the bye-laws, and, therefore, the words included by the amendment of 4.9.1982 'from the purchaser' precede by 'as soon as it is brought into the market yard', therefore, interpretation of the amended Rule 49(1), as advanced by the Division Bench about payment of fees on agricultural produce by the purchaser appears to be doubtful proposition if applied, in the present case where we are mainly concerned with Rule 48, sub-rule (2), of the Rules. Even otherwise also, while answering question No.1, as referred to in the earlier paragraph of this judgment, the Division Bench in the case of M/s. Doshi Kantilal vs. State of Gujarat, reported in 1994 (2) 35 GLR p.1706, proceeded on the premises that agricultural produce is brought into the market only for the purpose of sale and purchase and under Rule 49 (amended), fee is to be recovered from the

purchaser. So, proviso to sub-Rule (1) of Rule 49 about refund of market fees was in existence even when the Apex Court considered Rule 48(2) in the decision reported in AIR 1981 SC 1102.

14 In the present case, agricultural produce, namely, castor seeds are brought from outside the market area into the market area for extracting/producing castor oil, i.e. for captive consumption, namely, used by the industrial concern and, therefore, considering language of Section 28, which empowers the Market Committee to levy and collect fees on the agricultural produce bought or sold in the market area, subject to the Rules and prescribed rate, it is to be held that the Company is entitled for exemption from making payment of market fees.

15 Therefore, the finding with regard to exemption under Rule 48, sub-rule (2) available to the industrial concern only if agricultural produce is brought from outside market area into the market area by the industrial concern itself, does not appear to be sound. Even otherwise also, the agricultural produce brought from outside market area into the market area by the industrial concern itself, can come under the purview of Section 28, read with sub-rule (1) of Rule 48, in view of sale/purchase taking place in the market.

16 Thus, if the provision for claiming refund contained in clause (ii) of sub-rule (1) of Rule 49 of recovery of fees is examined, then also, the purchaser is entitled for refund of market fees subject to proviso to sub-rule (2) of Rule 48. In the facts of the present case, Form V filled in by the Company, as envisaged under sub-rule (2) of Rule 48 for the period in question, is not denied by the Market Committee and, therefore also, the Company is entitled for claiming refund of market fees paid by them

as per the order passed by this Court while admitting the appeals on 14th February 2006, or otherwise.

17 Reliance placed by the learned counsel for the Market Committee on the judgment of the Apex Court in the case of Agricultural Market Committee vs. Shalimar Chemicals Works Limited, reported in AIR 1997 Supreme Court 2502, on the contrary, comes to the rescue of the appellant. As soon as the agricultural produce, namely, castor seeds, purchased by the representatives of the Company, brought from outside the market area into the market area, after payment of octroi on such produce in the capacity of owner of the goods, it would be completion of sale outside limits of the market area. Thus, we hold that collection of market fees from the Company by the Agricultural Produce Market Committee, Vadodara, is contrary to the provisions of the Rules, namely, Rule 48, sub-rule (2) of the Rules, which grants exemption to agricultural produce brought from outside into market area by the industrial unit for its own use.

18 So far as the challenge to the order passed by the learned Single Judge by the Market Committee in Letters Patent Appeal No.195 of 2006 about levy of market fees on bye-product, namely, de-oiled cake, by the Committee, is concerned, the learned Single Judge has elaborately dealt with the process undertaken by the Company in paragraph 23, which reads as under:

> "23. The process undertaken by respondent no.2 for extraction of castor oil from the castor seeds purchased by it is not seriously in dispute. The fact that ultimately by-product which respondent no.2 claims to be de-oiled cake which the respondent no.2 sells in the market and on which the petitioner is seeking to levy market fee contains less than 1% castor oil is also not seriously in dispute. The respondent no.2 has explained the complex process through which the castor seeds are made to undergo so as to extract maximum possible oil out of it. At the first stage after cleaning and separating raw seeds from husk etc., the castor seeds are crushed

through mechanical devices to extract oil from the same. This mechanical process would obviously leave substantial amount of oil in the oil cake which may come into existence after extraction of oil. If this residual product was sold by respondent no.2 in the market, same would squarely fall under the head of oil cake. To that extent there is no serious dispute raised by the respondent no.2 also. However, respondent no.2 does not sale the oil cake which comes into existence by extracting oil from castor seeds through the above mentioned mechanical process. The oil cake so produced is made to undergo further extensive sophisticated and complex process by which instead of leaving 10% oil contents in the oil cake, the percentage of residue of the oil is brought down to less than 1%. By sophisticated means of operation, the wastage of oil is minimised and the oil extraction percentage is improved. Ultimately therefore, final by-product which comes into existence and which is sold by the respondent no.2 in the market is de-oiled cake having less than 1% oil contents. It can thus be seen that oil cake and de-oiled cake are two separate products. By very nature of terminology used for both products it would indicate that oil cake would contain the residue of oil seeds which would also include some percentage of oil. It is only when almost entirely the oil cake is devoid of oil contents that it is labelled as de-oiled cake. Gujarat Sales Tax Act also takes cognizance of two different products namely oil cake and de-oiled cake. I am only drawing further support from these entries contained in Gujarat Sales Tax Act and not for the purpose of interpretation of the term so defined in the said Act. As noted said Act does not define the term oil cake. From the available material on record, such as difference in the contents of oil in oil cake and de-oiled cake, cognisance of different terms namely oil cake and de-oiled cake in the Gujarat Sales Tax Act, the difference in the process of oil extraction which would lead to by-product of the oil cake and de-oiled cake, the certificate produced on record by the respondent no.2 indicating the difference of percentage of oil contents in oil cake and de-oiled cake, it can be seen that two are independent, separate and distinct products and so understood in common parlance as well. The term “oil cake” contained in the schedule therefore, in my opinion would not include de-oiled cake. The attempt on the part of the petitioner-Agriculture Produce Market Committee to levy market fees on sale and purchase of such de-oiled cake in my opinion is not permissible. Schedule to the Act specifies oil cake as one of the agricultural produces on which market fee can be charged. In view of my conclusion, that term oil cake does not include de-oiled cake, I find that petitioner is not authorised to

> charge market fees on the de-oiled cake sold by the respondent no.2. The difference in process which would lead to obtaining oil cake and de-oiled cake was also noticed by Hon'ble Supreme Court in the case of State of A.P. and others v. M/s. Modern Proteins ltd. reported in 1994 Supp (2) Supreme Court Cases 496 on which reliance was placed by the leaned advocate for the respondent no.2. It was noted that groundnut seeds obtained after the process of decortication are of high grade quality, rich in proteins but free from harmful materials processed in the expeller and the outcome is groundnut oil and groundnut oil cake. The groundnut oil cake again is pressed through the solvent in which "food hexane" is sprayed resultantly groundnut oil and groundnut de-oiled cakes are obtained."

19 Thus, the bye-product, namely, de-oiled cake, contains less than 1% oil and does not find notified in the schedule as per Section 2(i) of the Act as agricultural produce by the Authority and the above product is totally different than the oil cake, and, therefore, no fees can be paid by the Company. We are in full agreement with the above finding of the learned Single Judge in this regard and do not find any infirmity in the order impugned in the Market Committee.

20 As a result of foregoing discussion, Letters Patent Appeal No.139 of 2006 filed by Jayant Vegoils & Chemicals Private Limited stands allowed to the aforesaid extent. Letters Patent Appeal No.195 of 2006 filed by Agricultural Produce Market Committee, Baroda, is dismissed.

21 As per the modus worked out at the time of passing the order dated 14th February 2006, the amount of market fees deposited by the Company with the Market Committee be refunded to the Company, within eight weeks from the date of receipt of writ of this order.

22 Civil Applications for stay stand disposed of.

(Y.R. MEENA, C.J.)

(ANANT S. DAVE, J.)

[swamy]